

# Exhibit Cover Page

**EXHIBIT NUMBER D**

**LAW OFFICE OF BRYAN C. HATHORN**

Bryan C. Hathorn, J.D., Ph.D.

103 Stanley Ave

Maryville, Tennessee 37803

(865) 621-0417

bchathorn@gmail.com

February 25, 2024

**By email only**

President Wendy Raymond  
Haverford College  
370 Lancaster Avenue  
Haverford, PA 19041  
President@haverford.edu

**RE: February 29, 2024 Special Plenary**

Dear President Raymond:

I am a graduate of the class of 1991. I have conducted alumni interviews for years. I have given to the college within my means over the years, and I am a member of the Jacob Jones Society.

I write to share my concerns about the special plenary session scheduled for February 29, 2024. Without getting into the content of the resolution,<sup>1</sup> with which I and a substantial majority of my alumni friends disagree, I write about the gross failure in *procedure* for the plenary. The proposed procedure appears to violate the Haverford Student Association Constitution, from which the plenary rules are excepted as an attachment hereto.

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<sup>1</sup> I am an attorney and a fan of free speech within the bounds of respected norms. Although it is debatable whether the First Amendment applies to private institutions after the decision last year where the Supreme Court conducted a 14<sup>th</sup> Amendment analysis on Harvard. Notably, the 14<sup>th</sup> Amendment incorporates the bill of rights against states, and it is now unclear to me if it applies to private institutions. Nonetheless, I think First Amendment has value, and perhaps its principles should probably be applied broadly with the traditional time, manner, and place restrictions.

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## The Advertised Plenary Procedure

The details of the plenary procedure are somewhat vague. My understanding comes from the article in the Haverford Clerk, which I quote in pertinent part:

As outlined in Article IV; Section 4.02, J. of the Constitution of the Students' Association, the Students' Council can trigger an emergency plenary—or “further plenary”—to gauge the community response to a particular topic. For the emergency plenary to take place, a petition must be submitted to the Co-Presidents containing the signatures of 40% or more of the student body. For the Spring 2024 semester, this would mean receiving the signatures of at least 537 students. Once the necessary signatures have been collected, the emergency plenary is to be held at the soonest available opportunity and requires a quorum of at least 75% of the student body—1,007 students—in contrast to the 50% *[sic]* required for regular plenary. Concurrently, the resolution writers must collect the signatures of 200 students in support of the resolution for it to be presented at the emergency plenary.

Once the necessary signatures are collected, the emergency plenary town hall will take place on Thursday, February 29, following standard plenary procedures. For accessibility purposes, and to ensure that students can engage in the voting process despite its unexpected announcement, emergency plenary will be a hybrid and asynchronous process. It will take place over three days of quorum and voting collection, the maximum period permitted by the constitution. The town hall will also be the final day to submit friendly or unfriendly amendments for consideration. Following the three days of voting, the plenary will end with a closing town hall and pro-con debate on Sunday, March 3. If the resolution passes, in line with standard plenary procedure, it will be sent to President Wendy Raymond on March 3 for her consideration and approval.

Due to the ambiguity regarding the process of emergency plenary in the Constitution of the Students' Association, the Co-

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Presidents met with the Students' Council Election Coordinators to receive their interpretation of the section. The Election Coordinators determined that for it to pass, 75% of students must vote in support of the resolution.

(Paeton Smith-Hiebert, *Students' Council Proposes Emergency Plenary and Ceasefire Resolution*, Haverford Clerk, February 19, 2024.)

### **Constitutional Failures of the Proposed Procedure.**

There are inconsistencies between the advertised procedure and the procedures set forth in the Student Association Constitution. Indeed, it appears that those who are running the student counsel didn't even bother to consult the Constitution when they devised the rules.<sup>2</sup>

The Constitutional provisions are designed to give not only an appearance of a fair procedure, but to guarantee actual fairness and representation by all members of the student body, both pro and con. They cannot be set aside for the purpose of convenience.

*The procedure is not "ambiguous."*

As a preliminary matter, the article in the Clerk describes the process of an emergency plenary session in the Constitution of the Students Association as "ambiguous." It is not. The procedure for a special "Further Plenary" is set forth in Section 4.02(j):

Further Plenary sessions may only be called when the Co-Presidents of the Students' Association receive a petition signed by forty percent (40%) of the members of the Students' Association calling for such a Plenary. Quorum for this Plenary must be seventy-five percent (75%) of the Students' Association. Such Plenary sessions will be held at the soonest available opportunity.

There is nothing ambiguous in the procedure. There shall be a petition for a further plenary signed by 40% of the members of the Students Association. After such a petition is received, a new plenary will be held at the soonest available opportunity. The only change to the rules

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<sup>2</sup> Had the students asked me, I would have dedicated my time and resources pro bono to ensure that there was a fair procedure. Personally, I think the resolution is ill-conceived, but if they are going to do it, they should at a minimum have a fair and honest procedure.

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is that the quorum should be seventy five percent of the Students Association. All other rules apply.<sup>3</sup>

*“Asynchronous” and “Virtual” Plenary is Prohibited.*

The article in the Clerk also describes that a three day voting and quorum collection period for “accessibility.” Although, the plenary rules *do* provide for accessibility including such accommodations as “live stream” or an “overflow room,” (Section 4.02(b)), there is *nothing* that permits a plenary to continue without the appropriate numerical quorum—in this case 75%. (See Section 4.02(g)(i).) Indeed, if quorum is lost, the process must cease until it is regained. Indeed, the plenary procedures specifically provide that “only those *physically present* and counting for quorum at Plenary may cast ballots for that vote.” (Section 4.02((g)(iv) (emphasis added).)

In this case the relaxation of the rule is being done for convenience, not for necessity. This makeshift procedure defeats the purpose of the heightened quorum requirement for a special “Further Plenary.” The entire point of a heightened quorum requirement is to make the procedure more difficult and inconvenient. Changing the process to make it asynchronous defeats the protections of the special Further Plenary procedure.

The quorum rule in the Constitution and the voting rules require the student body to be present *at the same time*. To paraphrase President Kennedy, we do these things, not because they are easy, but because they are hard. It is the difficulty of the Further Plenary process that gives it great weight and lends to its validity.

*The Pro And Con Debate Happens After the Votes Are Taken.*

In another perplexing procedure invented to bypass the Plenary rules, the voting happens *before* the pro and con debate.<sup>4</sup> This procedure is nonsense and appears to violate the

<sup>3</sup> The authors of the article appear to be incorporating the rules for ratification of the *honor code* set forth in Section 3.08 of the Constitution into the rules for a special plenary, included in the appendix. The two sets of rules are different. Incorporation of the special rules for Honor Code ratification should not be permitted under the usual rules of statutory interpretation, which are beyond the scope of my discussion here.

<sup>4</sup> One might wonder what happens if someone decides to change their vote after hearing the pro and con debate. Is that permitted? How would it be done? If votes are anonymous—and one would hope that they would be—it is not possible.

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fundamental precept of Haverford—a meaningful and respectful exchange of values. How can any meaningful exchange of values happen when the debate happens after the vote?

Essentially, the final “town hall” meeting on the last day is nothing more than a rubber stamp of what has already happened. This embarrassing procedure is designed to rubber stamp the desired result rather than have a meaningful exchange of values.

### **The President Should Reject any Resolution Under the Unfair Plenary Process.**

The “Further Plenary” procedure appears to be designed to circumvent any fair process and is without authority. As a result, if and when any resolution is submitted to the President under Section 4.02(h), the President should simply note that it was enacted without any legitimacy and decline to review it. Indeed, to avoid taking sides, I encourage the President to not even read it. The President, can, and should, reject the resolution and note that it is without authority.

### **Conclusion**

I love Haverford. Haverford made me the person I am today. I recommend Haverford to the children of my friends. I recommend Haverford to people in the street. The strong honor code and sense of community make Haverford a special and unique place.

I see what appears to be a completely new plenary process in violation of the stated rules of the Students Association Constitution.<sup>5</sup> The process appears to be designed to force through a resolution supported by some of the students.<sup>6</sup>

Haverford is developing a growing reputation as being a place that supports antisemitism. I hope that this is not true. The time has come for the college to stand up against prejudice and the tide that makes students *of whatever faith* feel uncomfortable and unwelcome on campus. I therefore urge you to use your role under the administrative review provisions in Section 5.02(g) to simply reject any resolution passed ***without reading it***. The entire special Further Plenary procedure is outside the scope of the Constitutional process.

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<sup>5</sup> The article in the Clerk may just be poor journalism. It contains numerous errors—for example, it states that for a normal plenary the quorum is 50%, when quorum for an ordinary plenary is 66%. (Section 4.02.)

<sup>6</sup> It is an open question in my mind whether designing a procedure to do an end run around the Student Association Constitution is a violation of the honor code. In my view it is, but ultimately the Honor Council would have to have a trial.

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Sincerely,

A handwritten signature in blue ink, appearing to read "Bryan C. Hathorn".

Bryan C. Hathorn '91

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## **Excerpts from the Student Association Constitution<sup>7</sup>**

### **Section 4.02 Meetings of the Association**

The number of students required for quorum will be 66% of the Students' Association. When computing quorum, students studying away will not be counted when determining the total number of the Students' Association.

#### **(a) Meeting Dates**

The Students' Association will meet in Plenary session twice yearly. During the first week of each semester, Students' Council will choose and announce the date for Plenary, after checking with as many religious, cultural, and affinity groups as possible to minimize conflict, particularly with religious and cultural events. From the time of announcement, students have 72 hours to notify the Co-Presidents of any conflicts with the proposed date and time of Plenary.

#### **(b) Plenary Day Activities**

The Co-Presidents of Students' Council and members of the community including faculty are responsible for asking all pertinent College offices to refrain from scheduling events (guest speakers, athletics, etc.) on the semi-annually scheduled Plenary Sundays. The Co-Presidents are strongly encouraged to take any additional steps in regards to communication with all pertinent College offices and faculty to make Plenary as accessible as possible. It is the responsibility of the Students' Council Co-Presidents and Class Representatives to establish methods that ensure that accessible participation in Plenary is possible for those with mental health concerns, claustrophobia, or other concerns surrounding accessibility brought to the attention of Students' Council. People for whom Plenary would otherwise be inaccessible should count towards quorum. These methods may include but are not limited to: introducing a livestream, the creation of a smaller overflow room, and digital question-and-answer systems.

#### **(c) Resolution Meeting**

Before Plenary, Students' Council will sponsor a publicized meeting on the issues to discuss and further shape the proposals. This meeting must occur before signatures are collected if changes to the proposals are to be made.

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<sup>7</sup> Available at [https://docs.google.com/document/d/1uZg9GHbkzbcLqLL4JgY9D7DnCfaYXAUXOgdzmx9E\\_Cg/edit](https://docs.google.com/document/d/1uZg9GHbkzbcLqLL4JgY9D7DnCfaYXAUXOgdzmx9E_Cg/edit); last downloaded February 25, 2025.

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**(d) Resolution Signatures**

In order to bring a resolution to Plenary, the person(s) submitting the resolution must collect two hundred (200) signatures of the members of the Students' Association. Students' signatures will represent their support of the value of discussion of issues contained in the resolution, but may not necessarily represent a vote for the resolution. Resolution presenters are responsible for collecting signatures before a deadline specified in advance by the Students' Council Co-Presidents.

**(e) Resolution Presentation**

Proposals must be submitted to a Students' Council-appointed Committee by a deadline specified in advance by the Students' Council Co-Presidents. This committee will review all resolutions and assure that proper research and preparation has been executed, including discussion with the administration on pertinent matters. This review completed, Students' Council will distribute the resolutions to the Students' Association in time for discussion.

**(f) Plenary Agenda**

The Plenary agenda and rules of order will be determined by the Students' Council or a delegated committee.

**(i) Previous Plenary Resolution Presentation**

Directly following the presentation of the Plenary agenda, the Co-Presidents of the Students' Council will report on the current state of resolutions that were passed at the previous semester's Plenary.

**(ii) Students' Council Agenda**

The Co-Presidents of Students' Council will present the Students' Council agenda for the current semester to the Students' Association. This shall take place prior to the presentation of resolutions. There shall be a fifteen minute pro-con discussion of the agenda which may be extended based on the accepted rules of Plenary. Students' Council shall provide a forum for further discussion of the agenda at the Students' Council meeting directly following Plenary.

**(g) Voting Procedures/Rules of Order**

**(i) Quorum**

In order for quorum to be reached, at least 66% of the students living at Haverford must be present at Plenary. When computing quorum, students studying away will not be counted

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when determining the total number of the Students' Association. If quorum is lost at any point during Plenary, the meeting will be suspended until quorum is again reached. After 30 minutes without quorum, the Chairs may evaluate the situation going forward.

(ii) Voting Options

When voting, students may choose one of three options: "Yes," indicating approval of the matter at hand; "No," indicating disapproval and "no Vote," indicating a conscious decision to not vote.

(iii) Majority Rules

The outcome of all votes is determined by the proportion of students present at Plenary voting in the affirmative. Ratification of or amendments to the Alcohol Policy, the Plenary Rules of Order, and the Students' Constitution will require a two-thirds (2/3) supermajority. Ratification of all other resolutions and amendments will require a simple one-half (1/2) majority.

(iv) Voting Procedures

Votes at Plenary shall be conducted electronically and overseen by the Elections Coordinators. Each ballot will be required to reach a 66% quorum of the students living at Haverford, and Students' Council shall ensure that only those physically present and counting for quorum at Plenary may cast ballots for that vote. When electronic voting is impossible, the Students' Council Co-Presidents may permit a vote to be conducted using an informal method (e.g. raising of packets). If the outcome of the vote is abundantly clear in the eyes of the Elections Coordinators, they may proceed as if that outcome were decided by a formal vote. After any such determination, the Co-Presidents will call for any dissent as to the adjudication of the vote. If eight (8) or more members of the Students' Association come forward, or if the Elections Coordinators determine that the result of the informal vote is unclear, then a paper ballot must be conducted.

(v) Amendments to the Plenary Rules of Order

These may be presented and voted on prior to the presentation of the first resolution. Any portion of the agenda may be changed.

(vi) Pro-Con Debate

During any given pro-con debate a person will not speak for longer than 90 seconds at any given interval, nor shall they be recognized by the chair more than two times. Upon each

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extension of a pro-con debate, a person may be recognized by the chair one (1) additional time.

(vii) Amendments

Plenary may add “Friendly Amendments” or “Unfriendly Amendments” to a resolution by a vote of the majority. All friendly and unfriendly amendments must pertain to the current resolution as seen in the eyes of the chair. Once an amendment has been approved it may not be reversed, nor the resolution be withdrawn.

(xiii) Recusal

To speak to the content of a resolution, a chair must step down until the proposal is resolved. The Co-Vice President(s) shall then preside for the remainder of that resolution.

(ix) Time Limit

The time limit for Plenary shall be four hours. If this time limit expires, the assembled Plenary shall vote to extend the time limit for half an hour no more than two times. If the assembled Plenary fails to extend the time limit by majority vote, the pending resolution (if any) will be voted on immediately, without further discussion.

**(h) Administrative Review**

Within seven (7) days of the close of the Plenary session, the Co-Presidents of Students' Council will present all passed Plenary resolutions to the President of the College and all senior administrative staff for review. Within thirty (30) days, it is the responsibility of the Co-Presidents to gather a formal written response from the President of the College regarding the state of each resolution and to distribute the statement to the Students' Association. If the President of the College approves a resolution it will take effect as soon as possible unless otherwise stated in the resolution. Should the President of the College not approve a resolution, the Co-Presidents will hold a discussion session about the resolution. In cases where a resolution explicitly impacts faculty, staff, or the institution as a whole, the President will have the following options: (a) accept completely; (b) accept, with a stipulation for changes; and (c) reject altogether. The President will also be asked to articulate more fully the reasons for their decision. In case (b), the resolution proposers have the ability to either make the changes proposed by the President or they can choose not to make the changes. If the proposers do make a change, the resolution will go back to the community during the next Plenary. Assuming the Students' Association re-approves the amendment, it will once more turn to the President for feedback. If the proposers choose not to make the changes requested, however, the President will only have the option to accept or

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reject the resolution as proposed. A new Plenary may be called by petition of twenty percent (20%) of the members of the Students' Association, or by the Co-Presidents of Students' Council where a revised resolution may be presented.

**(i) Failure of Quorum**

Should quorum not be reached at the scheduled Plenary session of a given semester, everything to be ratified at that Plenary session fails. When this occurs in the spring semester, the Honor Code fails. If quorum is lost at any point, no more resolutions may be passed until quorum is regained.

**(j) Further Plenary Sessions**

Further Plenary sessions may only be called when the Co-Presidents of the Students' Association receive a petition signed by forty percent (40%) of the members of the Students' Association calling for such a Plenary. Quorum for this Plenary must be seventy-five percent (75%) of the Students' Association. Such Plenary sessions will be held at the soonest available opportunity.

**(k) Honor Code Resolutions**

Resolutions passed in the fall that require changes in the Honor Code will be withheld from use until Spring ratification.

**(l) Copies of the Constitution and Honor Code**

It is the responsibility of the Co-Presidents of Students' Council to ensure that all students have access to an unabridged copy of the Constitution and Honor Code online. A new, corrected and unabridged version must be available to all students within one month.

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**Section 3.08 Ratifying the Honor Code**

At Spring Plenary, there must be a vote by two-thirds of those present in favor of opening ratification of the Code. If this occurs, the electronic ratification system will be open the fourth and fifth days following Spring Plenary.

If two-thirds of those assembled at Plenary do not vote to open ratification of the Honor Code, the Code fails the first round of ratification. To subsequently ratify the Code, students must create and circulate a petition requesting the convening of a Special Plenary to enable ratification

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to open. Forty percent of students must sign this petition conveying their desire for such a Special Plenary and pledging to attend.

During the ratification period, Honor Council will schedule eight hours each day of tabling to answer any questions and receive any criticism of the Honor Code which might arise. This council member will have a computer with network access which students may use to ratify the code. All students are strongly encouraged under the Honor Code to vote or to communicate to Honor Council reasons why they did not or could not.

Ratification ballots will have three options and a space for comments, suggestions, or criticisms. Filling in this space for comments will be required by the electronic ballot. The ballot will read as follows:

- A) I have thoughtfully considered my position on the Code and I vote for its ratification for the following reason(s):
- B) I have thoughtfully considered my position on the Code and I vote for its ratification, but I have the following objection(s):
- C) I have thoughtfully considered my position on the Code, and I do not vote for its ratification for the following reason(s):

If more than two-thirds of the student body chooses option “A” or “B”, the Honor Code is ratified. If less than two-thirds of the student body chooses option “A” or “B” but more than two-thirds of the student body votes, the Honor Code fails, and a Special Plenary will be scheduled to modify the Code in such a way as to enable a two-thirds majority to vote for ratification.

If less than two-thirds of the student body votes, the Honor Code fails. Students should strongly consider the wisdom of convening a Special Plenary. Such a Plenary would be convened only if forty percent of the student body signs a petition not only asking for the Plenary, but pledging to attend. At a Special Plenary, three-quarters of the student body would constitute quorum, and votes in favor of ratification by two-thirds of the student body would be required for ratification to occur.

Should the Honor Code fail ratification, the Haverford Community will continue to observe the Honor Code’s rules and guidelines for a transition period of 6 academic weeks after the vote. A Special Plenary can be organized at any time within that period to ratify an Honor Code. If no Honor Code is ratified within that transition period, the Code will cease to be in effect. Further Plenaries may still be convened to ratify an Honor Code.

Upon its ratification, we renew our commitment to the Honor Code and we pledge to uphold these ideals through the conduct of our daily lives.